BOARD OF REVIEW DECISION

Title of publication:	f4912e0fbea8487a_0_embedded_1.jpg
Other known title(s):	Not stated
OFLC ref:	1900574.025
Medium:	Image File
Publisher:	Not stated
Country of origin:	Not stated
Language:	Not applicable
Applicant:	Michael McNeil
Classification:	Objectionable.
Descriptive note:	None
Display conditions:	None
Date of entry in Register:	01 July 2020
Date of direction to issue a label:	No direction to issue a label has been issued
Date of notice of decision:	26 June 2020

Summary of reasons for decision:

This was an application to the Board under section 47(2)(d) of the Films, Videos, and Publications Classification Act 1993 (the Act) by the applicant for a review of the decision of the Office of Film and Literature Classification (the Classification Office) dated 17 March 2020.

The publication at issue is an electronic image featuring a female appearing to be 10-12 years of age. Most of her body from the navel upwards is showing, all of which is naked. Her torso is upright. She appears to be straddling an adult male out of sight of the camera except for his forearms and hands which are cupping her undeveloped breasts. The image refers to a Young Libertines website.

In its decision, the Board classified the publication as objectionable under the Act. It held that the publication must be deemed objectionable in terms of section 3(2)(a) of the Act because it promotes or supports, or tends to promote or support, the exploitation of young persons for sexual purposes.

The Board also held that even had it not decided that the publication be deemed objectionable, it would have determined it to be objectionable under section 3(3)(b) because it exploits the nudity of young people, and under section 3(3)(d) because it promotes or encourages criminal acts, most particularly those between adults and minors.

The Board rejected the submission of the applicant that the age of the female depicted cannot be ascertained with certainty, holding that it is apparent age, which is of importance, rather than actual age. It held that the apparent age of the female is obvious, and that it is also obvious that the image portrays sexual activity. It placed considerable weight on the URL as an indication that the image supported and promoted the sexual exploitation of young persons.